No. 77-707

Supreme Court, U. S.
FILED
DEC 5 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

ROGER BARTHULI,

Petitioner,

v.

BOARD OF TRUSTEES OF JEFFERSON ELEMENTARY SCHOOL DISTRICT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF IN SUPPORT OF PETITIONER BY AMICI CURIAE: (1) AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS; (2) ASSOCIATION OF CALIFORNIA SCHOOL ADMINISTRATORS; (3) ARIZONA SCHOOL ADMINISTRATORS, INC.; (4) ARKANSAS ASSOCIATION OF EDUCATIONAL ADMINISTRATORS; (5) BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS; (6) FLORIDA ASSOCIATION OF SCHOOL ADMINISTRATORS; (7) KANSAS ASSOCIATION OF SCHOOL ADMINISTRATORS; (8) KENTUCKY ASSOCIATION OF SCHOOL ADMINISTRATORS; (9) MASSACHUSETTS ASSOCIATION OF SCHOOL SUPERINTENDENTS, INC.; (10) NEW YORK STATE COUNCIL OF SCHOOL DISTRICT ADMINISTRATORS; (11) OREGON ASSOCIATION OF SCHOOL EXECUTIVES; (12) PENNSYLVANIA ASSOCIATION OF SCHOOL ADMINISTRATORS; (13) SCHOOL ADMINISTRATORS OF SOUTH DAKOTA; (14) SOUTH CAROLINA ASSOCIATION OF SCHOOL SUPERINTENDENTS; (15) WISCONSIN ASSOCIATION OF SCHOOL DISTRICT ADMINISTRATORS.

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December 5, 1977

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

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AMICI CURIAE BRIEF IN SUPPORT OF PETITIONER

With the consent of counsel for both parties,* this brief *amici curiae* is filed on behalf of the following organizations:

(1) American Association of School Administrators; (2) Association of California School Administrators; (3) Arizona School Administrators, Inc.; (4) Arkansas Association of Educational Administrators; (5) Buckeye Association of School Administrators; (6) Florida Association of School

*The letters of consent are being filed with the Clerk of this Court, simultaneously with the filing of this brief.

Administrators; (7) Kansas Association of School Administrators; (8) Kentucky Association of School Administrators; (9) Massachusetts Association of School Administrators, Inc.; (10) New York State Council of School District Administrators; (11) Oregon Association of School Executives; (12) Pennsylvania Association of School Administrators; (13) School Administrators of South Dakota; (14) South Carolina Association of School Superintendents; and (15) Wisconsin Association of School District Administrators.

INTEREST OF THE AMICI CURIAE

The American Association of School Administrators, the first-named *amicus* herein, is a national professional organization of public school administrators. A nonprofit group, it has about 17,100 members at present. Its members include school administrators throughout the nation of virtually every rank, the greatest number being superintendents, deputy superintendents and associate or assistant superintendents (such as was the petitioner Roger Barthuli).

The other fourteen *amici* are various state associations of public school administrators, affiliated with the national association. Like the latter, each statewide organization's membership is composed of public school administrators and supervisors. The Association of California School Administrators, the second-named *amicus* herein, is the largest of these state associations, with a membership of over 12,000 such professionals.

Both the national and the state organizations share the primary purpose of seeking to unite all such administrators and supervisors in the betterment of public education. They promote and provide leadership to advance the public interest in improved schools; and they strive to improve the preparatory and inservice training of educational personnel. Constant efforts are being made to upgrade teaching and learning, to improve the curricula, and to eliminate prejudice, bigotry and discrimination within the profession. More particularly, they represent the desires and concerns of their members with respect to their basic legal and administrative rights and obligations.

That latter concern of the *amici*, the concern that the constitutional and legal rights of their members not be unduly impaired, has led them to file this brief. They view the *Barthuli* decision of the California Supreme Court as destructive of what has heretofore been considered an inviolate right of public school administrators – i.e., their constitutional right not to be summarily discharged, without notice or hearing, prior to the expiration of their multi-year employment contracts. They greatly fear that their professional futures, and indeed the future effectiveness of much of the public school system, are threatened by the negative precedential impact of the *Barthuli* decision.

REASONS WHY THE AMICI SUPPORT THE PETITIONER

The *amici* fully subscribe to the petitioner's analysis of the case and his reasons why review should be granted. As Justice Tobriner said in dissenting below, the California court's "failure to give effect to the clear mandate of the *Roth* and *Perry* decisions is, in my mind, simply inexplicable." Pet. App. 10a. And by its excessively constricted view of applicable state law, with respect to determining what property interests are protected by the Fourteenth Amendment's Due Process Clause, the majority below has bent beyond recognition the "unfettered discretion" principal of *Bishop v. Wood*, 426 U.S. 341, 350, n. 14 (1976).

But this brief is not designed to restate the constitutional and legal considerations set forth in the petition. Its purpose, rather, is to elaborate and emphasize the petitioner's assertion (Pet. 21-22) that the questions raised by the decision below pose a direct threat to the the many thousands of public school administrators throughout the United States who are serving under the same kind of multi-year employment contract as was the petitioner, Roger Barthuli.

It is a fact, of course, that the multi-year employment contract is in common use for employees at the superintendent level in virtually every state in the Union. It is also used, though with somewhat less frequency, for professionals occupying the positions of deputy, associate and assistant superintendent. Indeed, in California, Section 938 of the Education Code makes contracts up to four years in length the standard for all types of superintendents, including the deputies, associates and assistants. Some of these long term contracts that are individually negotiated may contain their own dismissal or termination procedures, which usually reflect basic due process requirements. But most such contracts, such as the one here in issue, are rudimentary form contracts developed by school board attorneys; they normally contain no provision for dismissal or termination prior to the expiration of the contract term and hence contain no due process guidelines. Whatever due process must be accorded dismissals under these form contracts comes only from the Due Process Clause of the Fourteenth Amendment.

The wide use of the multi-year employment contract, particularly of the four-year variety, is not a chance development. It was deliberately designed both (1) to permit the delivery of quality educational leadership, and (2)

to protect the administrators' property interest in maintaining an employment relationship of sufficient duration to permit effective development of educational programs. Administrators are often selected to bring about changes in school systems. Yet the size and complexity of many school systems make it difficult to achieve such changes quickly. While the change is underway but not yet accomplished the administrator-proponent of a controversial change may be subject to great pressures from those seeking to preserve the status quo. The multi-year contract is a security-giving instrument for an administrator facing this kind of situation. And it is a situation frequently confronting administrators required by law to implement multi-year programs of school desegregation and integration, where those policies are highly unpopular with various interest groups in the community. A multi-year contract is a powerful shield for a conscientious administrator carrying out a court order against the community's expressed will.

With the advent of public employee collective bargaining, moreover, public school administrators are often put into an adversary position vis-a-vis other school district employees, thereby causing political pressures to be brought on the administrators. A multi-year contract offers the security necessary for such an administrator to continue to support the public interest as reflected by the board of education's policy.

Thus the multi-year employment contract has come to play an important and permanent role in the administration of the nation's public school systems. Any threat to the continued efficacy of such contracts necessarily is a threat to the capacity of the school systems to attract and maintain qualified administrators. The *Barthuli* deci-

sion by the California Supreme Court constitutes just such a threat. By removing all due process restrictions on this kind of a summary termination, the decision has thrown into confusion the professional security so essential to the functioning of our public school system. Since most multi-year contracts lack any contractual or statutory due process protections, they are particularly vulnerable to any judicial lifting of the Due Process Clause of the Fourteenth Amendment from the sphere of public school administrators. In sum, the entitlement of such administrators to the benefits of precedural due process with respect to dismissal from their long term employment contracts is frequently dependent upon judicial recognition of the applicability of the Due Process Clause. And it is precisely because the *Barthuli* decision has rejected that recognition that causes the decision to be viewed with such fear and foreboding by the entire administrative personnel of the nation's schools.

That the threat posed by the *Barthuli* ruling is not imaginary is demonstrable by reports from the various *amici*. In California, for example, the school boards have been advised by their state association that, as a result of the *Barthuli* decision, school administrative personnel "have no property right in their employment and, therefore, do not have the rights of due process of notification, hearing, etc. prior to any termination for cause." *Newsgram* of California School Boards Association, Vol 77, No. 8, Aug. 29, 1977, p. 1. And the *Barthuli* decision has been repeatedly cited by school board counsel in California in justification of ongoing efforts to oust administrative personnel before completion of their contractual term of office.

The Massachusetts Association of School Superintendents, one of the *amici*, reports that the *Barthuli* decision is

likely to have an impact on a court action in that state (*Colman v. Parquette, et al.*, Superior Court No. 5188), wherein a public school superintendent, summarily discharged from his position two years before the expiration of his contract, is attempting to regain his position and to vindicate his due process rights. The Kentucky Association of School Administrators states that, while the Kentucky school laws provide for giving reasons for termination, "due process is limited and would be affected by a decision to uphold the ruling of the California Supreme Court." And in explaining its substantial interest in the *Barthuli* ruling, the Wisconsin Association of School District Administrators has commented:

> "Annually, we render advice, through our legal counsel, to a small but significant number of school district administrators who face potential termination of their employment, despite the fact that they have a contract in effect with their local school district. In virtually all such cases the issue of the due process rights and the 'property' rights of the school administrator in his job become important. The point at which these administrators face this issue usually relates to their rights to face their accusers, receive a written list of the charges being brought against them, the right to provide evidence and testimony to rebut these charges, and their right to counsel before the board of education which will decide their fate.
>
> "Although we know of no case in the State of Wisconsin in which the *Barthuli* decision has been cited, we have no doubt

that the *Barthuli* case will become an important precedent in this state. Wisconsin law frequently parallels that of the State of New York and the State of California in issues of this type. As a result, we anticipate that as the *Barthuli* decision becomes known to counsel for school districts, we will see it cited for purposes of denying a school administrator of what we believe to be his due process rights. Furthermore, we are very concerned that the Wisconsin Supreme Court might someday cite this case in support of a decision which would deny a school administrator of what we believe to be his due process rights in employment termination cases."

Such, then are the feared consequences of a decision that transforms all term employment contracts of public school administrators into contracts summarily terminable at the will of the school board employers. In a word, the *Barthuli* decision is a signal to school boards throughout the land that they may ignore with impunity their comitments to employ administrative personnel for a stated period of time, and that they may ignore with impunity all the fine promises of the Due Process Clause of the Fourteenth Amendment. The *amici* submit, however, that this Court should not and cannot permit such a signal to be given.

One final note is in order. The suggestion of the court below that the petitioner Barthuli was really not injured because he retained his tenure as a classroom teacher is unsound, legally and practically. No amount of tenure as a classroom teacher can cure a due process defect in dis-

missing such a teacher from a position as an administrator. No citation of authority is necessary to prove the fact that the school administrator performs a function entirely separate and apart from the classroom teacher. As an administrator, an individual is an agent of the school district governing board and is a part of the management team. And as a manager, he has a different set of responsibilities, including fiscal responsibility. By any token, the professions of teaching and administering are regarding by all persons in the school community as separate and distinct.

To suggest, therefore, that an administrator should be satisfied with the idea of a demotion or reassignment to a classroom position is totally unrealistic. The effect of such a reassignment, after years of serving as an administrator, is essentially to deprive one of a chosen profession, particularly in an era when administrative positions are becoming more scarce. A person once summarily discharged from an administrative position is not likely to emerge again in another administrative capacity; nor is his future as a classroom teacher, if he were to accept the reassignment, readily assured. To force an administrator to accept a classroom assignment, as the price for being summarily discharged as an administrator and without supporting objective evidence to justify the reassignment, is tantamount to capricious professional assassination. Such cannot be the spirit or the objective of the Due Process Clause of the Fourteenth Amendment.

CONCLUSION

For these intensely practical reasons, the *amici* fully support the grant of review in this case, to the end that the destructive and retrogressive decision below may be reversed and the due process rights of public school administrators once again vindicated.

Respectfully submitted,

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